

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAWRENCE McCOLLUM,

Defendant.

NO. 2:15-cr-00392-RAJ

ORDER ON DEFENDANT'S MOTION
FOR COMPASSIONATE RELEASE

I. BACKGROUND

This matter comes before the Court on Defendant Lawrence McCollum's motion for compassionate release. Dkt. 58. Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby **DENIES** the motion for the reasons explained herein.

In November 2015, a United States Homeland Security Investigations agent, working undercover, downloaded several images of young boys being raped by adult men from a computer later determined to be associated with Mr. McCollum. At the time, Mr. McCollum was a registered sex offender who had earlier spent 210 months in prison for the crime of Rape of a Child in the First Degree. Upon executing a search warrant at Mr. McCollum's home, federal agents seized numerous digital devices containing child pornography, which included videos of young boys being tied up, blindfolded, and anally raped by adult men.

1 On July 7, 2016, Mr. McCollum pleaded guilty to one count of receipt of child
2 pornography and one count of possession of child pornography. Dkt. 36. On
3 December 2, 2016, this Court sentenced Mr. McCollum to 180 months of imprisonment,
4 the mandatory minimum prison term for his offenses, and a lifetime term of supervision.
5 Dkt. 51. He is currently housed at Federal Correctional Institution Lompoc and is
6 scheduled to be released on September 11, 2028.

7 On September 21, 2020, Mr. McCollum filed the instant motion requesting
8 compassionate release and a sentence reduction to time served, with a proposed special
9 condition requiring him to reside at a halfway house and/or be confined to home
10 detention for a period of time as determined by the Court. Dkt. 58.

11 Mr. McCollum is currently 66 years of age. He argues that his age and his
12 deteriorating health conditions after having contracted coronavirus-19 (COVID-19) while
13 incarcerated place him at greater risk of complications should he re-contract the virus.
14 Further, he argues that FCI Lompoc is unable to protect vulnerable inmates like him from
15 the virus. Dkt. 58.

16 The government opposes the motion, responding that Mr. McCollum has not
17 provided reasons that would support a finding by this Court that extraordinary and
18 compelling circumstances exist to warrant his early release, and that Mr. McCollum has
19 failed to establish he no longer poses a danger to others and the community. Dkt. 64.

20 II. DISCUSSION

21 A. Legal Standard for Compassionate Release

22 18 U.S.C. § 3582(c)(1)(A) allows a court to reduce a term of imprisonment if
23 “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is
24 consistent with applicable policy statements issued by the Sentencing Commission.” The
25 Sentencing Commission’s policy statement, in turn, says that a court may reduce a term
26 of imprisonment if “the defendant is not a danger to the safety of any other person or to
27 the community” and “extraordinary and compelling reasons warrant such a reduction.”
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United States Sentencing Guidelines (“USSG”) § 1B1.13. The policy statement clarifies that such reasons exist when (1) “the defendant is suffering from a terminal illness” or (2) “the defendant is suffering from a serious physical or mental condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” USSG § 1B1.13 cmt. n.1. The policy statement also directs a court to consider the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate release is appropriate and what form compassionate release should take. USSC § 1B1.13 cmt. n.4.

Mr. McCollum’s motion seeks a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018. As amended, § 3582(c)(1)(A) permits an inmate, who satisfies certain statutorily mandated conditions, to file a motion with the sentencing court for “compassionate release.” As relevant to Mr. McCollum’s motion, the statute now provides:

(c) Modification of an imposed term of imprisonment. --The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction;

. . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A).

1 The relevant statute gives this Court authority to reduce a previously imposed
2 sentence if three requirements are satisfied: (1) the inmate has either exhausted
3 administrative review of the Bureau of Prison's failure to bring such a motion, or waited
4 until 30 days after the request was made to the warden where the inmate is housed if that
5 is earlier; (2) the inmate has presented extraordinary and compelling reasons for the
6 requested reduction; and (3) the reduction is consistent with the Sentencing
7 Commission's policy statement.

8 **B. Exhaustion of Administrative Remedies.**

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10 Prior to considering the merits of Mr. McCollum's compassionate release motion,
11 the Court must determine whether he has met the statutory exhaustion requirement for
12 compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A). On June 1, 2020, Mr.
13 McCollum, through his counsel, submitted a request for compassionate release to the
14 warden at FCI Lompoc. Dkt. 58, Ex. A. As more than 30 days have elapsed since the
15 submission of the request to the warden, Mr. McCollum's motion is properly before the
16 Court.

17 **C. Extraordinary and Compelling Circumstances.**

18 The Court must next determine if extraordinary and compelling circumstances
19 warrant a reduction of Mr. McCollum's term of imprisonment. *See* 18 U.S.C.
20 § 3582(c)(1)(A)(i); USSG § 1B1.13.

21 The policy statement referenced in § 3582(c)(1) was promulgated by the
22 Sentencing Commission pursuant to the authority Congress vested in it in 28 U.S.C.
23 § 994. That statute provides:

24 The Commission, in promulgating general policy statements regarding the
25 sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall
26 describe what should be considered extraordinary and compelling reasons for
27 sentence reduction, including the criteria to be applied and a list of specific
28 examples. Rehabilitation of the defendant alone shall not be considered an
extraordinary and compelling reason.

1 28 U.S.C. § 994(f).

2 Consistent with this statute, the applicable policy statement can be found at
3 Section 1B1.13 of the United States Sentencing Guidelines. That statement provides:

4 Upon motion of the Director of the Bureau of Prisons under 18 U.S.C.
5 § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may
6 impose a term of supervised release with or without conditions that does not
7 exceed the unserved portion of the original term of imprisonment) if, after
8 considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they
are applicable, the court determines that--

9 (1)(A) Extraordinary and compelling reasons warrant the reduction...

10 (2) The defendant is not a danger to the safety of any other person or to the
community, as provided in 18 U.S.C. 3142(g); and

11 (3) The reduction is consistent with this policy statement.

12 U.S.S.G. § 1B1.13 (2019).

13 In the commentary, the Commission goes on to explain what constitutes
14 “extraordinary and compelling reasons” to support a reduction in sentence. Specifically,
15 Application Note 1 provides that extraordinary and compelling reasons exist if the
16 defendant is suffering from a serious physical or medical condition...that substantially
17 diminishes the ability of the defendant to provide self-care within the environment of a
18 correctional facility and from which he or she is not expected to recover.” U.S.S.G. §
19 1B1.13 cmt.n.1.

20 In addition to the foregoing, case authority on this issue supports the proposition
21 that when an inmate has health conditions that make them significantly more vulnerable
22 to COVID-19, that likewise may constitute an extraordinary and compelling
23 circumstance. *See e.g., United States v. Cosgrove*, Case No. CR15-0230-RSM, -F. Supp.
24 3rd-, 2020 WL 1875509 (W.D. Wash. April 15, 2020; *United States v. Dorsey*, Case No.
25 CR16-0138-BLW-JCC, 2020WL 2562878 (W.D. Wash. May 19, 2020).

26 While some courts have held, as argued by the Government, that the Sentencing
27 Commission’s policy statement on compassionate release remains controlling in the wake
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1 of the First Step Act, this Court agrees with the position taken by numerous courts that
2 the “old policy statement provides helpful guidance, [but]...does not constrain [a court’s]
3 independent assessment of whether ‘extraordinary and compelling reasons’ warrant a
4 sentence reduction under § 3852(c)(1)(A).” *United States v. Cosgrove, Id.*; *United States*
5 *v. Rodriguez*, 2020 WL 1627331, (E.D. Penn. Apr. 1, 2020); *United States v. Almontes*,
6 2020 WL 1812713 (D. Conn. Apr. 9, 2020); *United States v. Haynes*, No. 93 CR1043
7 (RJD), 2020 WL 1941478 (E.D. N.Y. Apr. 22, 2020); and *United States v. Maumau*, No.
8 2:08-cr-00758-TC-11, 2020 WL 806121 (D. Utah, Feb. 18, 2020).

9 In May of 2020, Mr. McCollum contracted COVID-19 while serving his term of
10 incarceration at FCI Lompoc. He argues that until there is a viable vaccine, he remains
11 vulnerable to further health complications should he re-contract the virus, and that the
12 Court should therefore grant him compassionate release given his age and deteriorating
13 health. Dkt. 58.

14 At 66 years of age, Mr. McCollum indicates he is in a risk category recognized by
15 the Centers of Disease Control and Prevention (CDC) which makes him particularly
16 susceptible to health complications from the virus. He argues that his age, in and of
17 itself, supports an “extraordinary and compelling” reason for compassionate release,
18 particularly when combined with his other underlying health issues. Dkt. 58.

19 Mr. McCollum argues that while he was fortunate to have already survived a bout
20 of COVID-19, there is no definitive evidence to support a claim that he is now immune
21 and will not become re-infected. He contends that should he become infected again,
22 given the effects on his body from his first infection, his body and immune system may
23 not be strong enough to recover. Mr. McCollum posits that, in considering his motion,
24 the Court should accept as fact that he could become re-infected again with COVID-19.
25 Dkt. 58.

26 In addition to his age, Mr. McCollum’s motion also rests on his argument he is
27 suffering from overall deteriorating health, including weight loss, hypertension, possible
28 development of diabetes, hyperlipidemia, hypertensive heart disease without heart failure,

1 | bronchitis, respiratory disorder; and an enlarged prostate. Dkt. 60, Ex B. He fears his
2 | deteriorating health from having already contracted COVID-19 may weaken him further
3 | to the point he is wheelchair-bound and permanently disabled. Dkt. 58.

4 | Finally, Mr. McCollum argues it is impossible for him and any inmate at FCI
5 | Lompoc to adhere to the recommendations of the CDC to help protect against the spread
6 | of COVID-19, specifically setting forth his inability to remain six feet apart from
7 | others, wash his hands frequently, disinfect common areas, and self-isolate. Dkt. 58.

8 | In response, the government argues Mr. McCollum has failed to establish that his
9 | fear of COVID-19 re-infection and his current medical conditions present extraordinary
10 | and compelling reasons for the early termination of his custodial sentence. The
11 | government indicates that Mr. McCollum did test positive for COVID-19 on May 5,
12 | 2020, and that by May 20, 2020, after developing a cough, and suffering weight loss and
13 | other symptoms, he was transferred to the UPS Lompoc Hospital Care Unit for care,
14 | where he remained from May 20, 2020, until June 3, 2020. Dkt. 66, Ex. 1 at 59-87,
15 | 91-100, 124-136. The government argues, however, that the medical records indicate
16 | Mr. McCollum has fully recovered from the virus and that he has sought little by way of
17 | medical attention since his hospitalization, except for treatment for issues related to his
18 | enlarged prostate. Dkt. 66, Ex. 1 at 1, 4, 124. The government points to records
19 | indicating that Mr. McCollum has received follow-up care to ensure heart issues have not
20 | developed (Dkt. 66, Ex. 1 at 125-126), and that bloodwork done after an elevated glucose
21 | level in May of 2020 show glucose levels back within a normal range (Dkt. 66, Ex. 1 at
22 | 29, 39).

23 | While conceding age is a factor the CDC considers relevant to an individual's risk
24 | of developing complications from COVID-19, the government argues this is but one
25 | factor the Court should consider in evaluating Mr. McCollum's motion. Dkt. 64.

26 | The government argues Mr. McCollum's claimed hypertension is not a medical
27 | condition that the CDC has identified as a risk factor for serious complications from
28 | COVID-19, but rather is identified as a *possible* risk factor. Further, the government

1 points to Mr. McCollum's medical records from the Bureau of Prisons (BOP) indicating
2 that his hypertension is being successfully controlled with medication. Dkt. 66, Ex. 1.

3 The government counters Mr. McCollum's argument that he faces the risk of re-
4 infection having already contracted the virus with current information from the CDC
5 indicating the question remains open on whether re-infection is possible. Dkt. 64.

6 In response to Mr. McCollum's contention that social distancing and other
7 measures to prevent the spread of the virus are difficult or impossible at FCI Lompoc, the
8 government points to the efforts made by the facility to test and identify those inmates
9 who have contracted the virus and to then isolate them from the rest of the inmate
10 population. As evidence of this effort, the government sets forth that as of the time of
11 filing its response to Mr. McCollum's motion for compassionate release, no inmates at
12 FCI Lompoc currently had the virus and that 750 inmates were listed as "recovered."
13 Dkt. 64.

14 Mr. McCollum has suffered the misfortune of having contracted COVID 19, but
15 he has also experienced the good fortune of having recovered from it. A significant
16 portion of his motion for compassionate release is his fear of suffering re-infection with
17 the virus. While his fear is real, the certainty or risk factor of the virus returning is a
18 complete unknown. If the Court is expected to make a determination based upon the
19 virus returning, it must rely upon Mr. McCollum's known medical condition and
20 evidence-based indication of the likelihood of the reoccurrence of the virus or its
21 symptoms. Other than his age, he has not presented sufficient evidence of justification to
22 warrant granting his request. Even the CDC has not provided a definitive statement on
23 the issue of whether an individual can recontract the virus or whether they have immunity
24 after having recovered from it.

25 Considering the foregoing, this leaves the Court with Mr. McCollum's general
26 concerns about the possibility of catching the virus again. General concerns about
27 possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling
28 reasons for reduction in sentencing as set forth in the Sentencing Commission's policy

statement on compassionate release, U.S.S.G. § 1B1.13. *United States v. Eberhart*, No. 13-cr-00313, 2020 WL 1450745 (N.D. Cal. Mar. 25, 2020). Nor do such fears warrant a sentence reduction under the Court’s independent assessment of the facts and circumstances presented.

Mr. McCollum also contends that because he suffers from hypertension, that condition should be considered in the Court’s analysis. His motion on this condition is denied for two reasons. First, Mr. McCollum’s medical condition as reflected in his BOP medical records strongly suggest he is on medications for this condition and it is well controlled as of the date of this order. Second, the CDC has issued a tempered warning that hypertension “might” be a risk factor. However, the CDC does not include high blood pressure in its list of factors that lead to an increased risk of severe illness from COVID-19.

The Court reaches the same conclusion with respect to the “other medical conditions” referenced by Mr. McCollum. None of these individually or collectively warrant reducing his term of imprisonment for extraordinary and compelling reasons.

After analyzing Mr. McCollum’s health related concerns, the issue of the conditions of his place of incarceration must be addressed. In reviewing his request, the Court notes that it has traditionally considered the current conditions at the housing facility according to the BOP website. If Mr. McCollum serves the balance of his custodial time at Lompoc, the current (November 24, 2020) conditions at that facility indicate:

Inmates Positive:	0
Staff Positive:	0
Inmate Deaths:	2
Staff Deaths:	0
Inmates Recovered:	701
Staff Recovered:	19

1 This Court is keenly aware of the limitations imposed in a prison setting and
 2 particularly those that previously existed at Lompoc. As the government points out,
 3 many of the circumstances that previously existed during the outbreak are being
 4 addressed. Of particular import is the government's report that the testing scheme
 5 utilized by BOP was able to identify the extensive number of cases within the facility and
 6 gain information to stop further spread of the virus. This effort, according to the
 7 government, includes quarantining new inmates to the institution and testing to ensure
 8 there is no spread. Dkt. 64, p. 9. Considering the current evidence of conditions at
 9 Lompoc noted above, the evidence strongly suggests the conditions have changed and
 10 ameliorated the degree of Mr. McCollum's claim. Mr. McCollum should be the
 11 beneficiary of the changed testing and follow-up at Lompoc. Consequently, his argument
 12 about Lompoc fails to support his release as requested.

13 **D. Safety of Others and 18 U.S.C. §3553 (a) Factors**

14 The Court next turns to whether Mr. McCollum presents a danger to the safety of
 15 any other person or to the community. *See* U.S.S.G. §1B1.13(2). In making this
 16 determination, the Court looks to the nature and circumstances of the underlying offense,
 17 the weight of evidence against him, his history and characteristics, and the nature and
 18 seriousness of the danger his release would pose to any person or the community.
 19 18 U.S.C. §3142(g). The Court may not reduce a defendant's sentence unless it finds that
 20 "the defendant is not a danger to the safety of any other person or to the community, as
 21 provided in 18 U.S.C. § 3142(g)."

22 Mr. McCollum argues that his lifetime period of supervised release with its strict
 23 conditions are enough to protect the community and will mitigate the risk he would be a
 24 danger to any individual or to the community. He points as well to his age and poor
 25 health as factors militating against recidivism. Dkt. 58

26 Further, Mr. McCollum argues that the sentence he is serving during this global
 27 pandemic has resulted in far greater punishment than he would be experiencing under
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1 normal circumstances, including prolonged lockdowns, loss of recreation and other
2 programming, and access to his family. Mr. McCollum argues these conditions of
3 confinement were not foreseeable at the time the Court imposed its sentence and warrant
4 a reconsideration of the § 3553(a) factors. Dkt. 58.

5 The government argues Mr. McCollum remains a danger to others and to the
6 community given that, despite spending nearly 20 years in prison for the crime of Rape of
7 a Child in the First Degree, he went on to commit the instant offense for which he was
8 sentenced to the mandatory 15-year minimum sentence deemed by Congress to be
9 sufficient and necessary for crimes of this serious nature. Dkt. 64.

10 The Court agrees with the government. This Court is unable to find that Mr.
11 McCollum is not a danger to the safety of any other person or to the community.
12 18 U.S.C. §3142 (g). While the Court finds it unnecessary to characterize Mr. McCollum
13 as a “child rapist” as done by the government, Mr. McCollum’s ongoing danger to the
14 community is palpable. He was convicted and sentenced to 36 months for Statutory Rape
15 in the First Degree and released from prison September 25, 1989. Barely three years
16 after release, Mr. McCollum reoffended again and was charged on September 7, 1992
17 with Rape of a Child in the First Degree. He was sentenced on September 7, 1992 to 210
18 months of imprisonment and released September 20, 2006. Nine years later Mr.
19 McCollum committed the instant offense for which he is currently serving time. While
20 the most recent offense did not include a hands-on offense and did reflect a gap in time,
21 Mr. McCollum nevertheless returned to related conduct by downloading videos of
22 children being raped. Mr. McCollum’s repeated conduct and attraction to sexually
23 violent behavior involving children despite years of incarceration does little to diminish
24 this Court’s conclusion that he remains a danger to the community. For these reasons
25 alone, the Court denies his request for early release in order to safeguard the community
26 and reflect the serious harm that child pornography trafficking imposes on society. While
27 some may view merely looking at child pornography as undeserving of harsh
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1 | punishment, Mr. McCollum's conduct helps create a lucrative market for those in the
2 | industry of creating child pornography and committing violence against young children.

3 | **III. CONCLUSION**

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5 | For the foregoing reasons, Defendant Lawrence McCollum's motion for
6 | compassionate release is **DENIED**.

7 | DATED this 24th day of November, 2020.

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10 | The Honorable Richard A. Jones
11 | United States District Judge
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